

ORIGINAL

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SEP 22 2011

UNITES STATE BANKRUPCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CLERK *WV*
United States Bankruptcy Court
San Jose, California

In re

MICHAEL R. BERUBE,
Debtor.

MICHAEL R. BERUBE,
Plaintiff,

v.

US BANK, NATIONAL ASSOCIATION, AS
TRUSTEE FOR JPM ALT 2007-A2
Defendants.

Case No.: 09-54715-ASW-11

Adversary Case No.: 11-05054 ASW
(Chapter 11)

JUDGE: Arthur S. Weissbrodt

Plaintiff's Correction to Statement
Filed by Defendant

DATE: September 26, 2011

TIME: 3:00 p.m.

CRTRM: 3020

Attached hereto as Exhibit I is a final copy of the version of the Joint Statement Defendant returned to me as the one that they intended to file after I had made changes to an earlier version. This final version differs from the Statement that they actually filed. I did not sign the statement that they filed nor agree to it even though the statement that they filed indicates that I signed it. The dates set are basically satisfactory and WERE agreed upon based upon Defendant agreeing to supply a verification and further answers to Plaintiff's discovery by October 1, 2011. The differences between the two versions are contained in paragraph 2 and 6.

Also attached hereto collectively as Exhibit II are copies of some email exchanges showing conferring about the joint statement before Plaintiff filed its unilateral version.


Michael Berube

**EXHIBIT I
(3 PAGES)**

**FINAL NEGOTIATED VERSION OF JOINT STATEMENT SENT BY
DEFENDANT TO PLAINTFF (NOT FILED BY DEFENDANT
THOUGH)**

1 JOHN M. SORICH (CA Bar No.125223)
jsorich@alvaradosmith.com
2 S. CHRISTOPHER YOO (CA Bar No. 169442)
cyoo@alvaradosmith.com
3 LAUREN M. TAKOS (CA Bar No. 255164)
ltakos@alvaradosmith.com
4 ALVARADOSMITH
A Professional Corporation
5 1 MacArthur Place, Suite 200
Santa Ana, California 92707
6 Tel: (714) 852-6800
Fax: (714) 852-6899

7 Attorneys for Defendant
8 US BANK, NATIONAL ASSOCIATION,
AS TRUSTEE FOR JPM ALT 2007-A2

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 In re

13 MICHAEL R. BERUBE,
14 Debtor.

15
16 MICHAEL R. BERUBE,
17 Plaintiff,

18 v.

19 US BANK, NATIONAL ASSOCIATION, AS
20 TRUSTEE FOR JPM ALT 2007-A2

21 Defendants.
22

Case No.: 09-54715-ASW-11

Adversary Case No.: 11-05054 ASW
(Chapter 11)

JUDGE: Arthur S. Weissbrodt

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT OF
DEFENDANT US BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR JPM
ALT 2007-A2**

DATE: September 26, 2011

TIME: 3:00 p.m.

CRTRM: 3020

23 **TO THE HONORABLE ARTHUR S. WEISSBRODT, UNITED STATES BANKRUPTCY**
24 **JUDGE, PLAINTIFF, IN PRO SE, AND ALL INTERESTED PARTIES:**

25 Defendant US Bank National Association, as Trustee for JPM ALT 2007-A2 ("USBank")
26 and Plaintiff, Michael R. Berube ("Plaintiff") (collectively, the "Parties") hereby submit this joint
27 Case Management Statement.
28

1 **1. Date and Time Counsel Conferred:** Plaintiff and counsel for Defendants have conferred
2 regarding this matter on several occasions, most recently on September 12, 2011.

3 **2. Factual Background and Procedural History**

4 In connection with Plaintiff's bankruptcy petition, Plaintiff filed the instant adversary
5 Complaint on February 16, 2011, which arises out of the events surrounding the mortgage loan in the
6 sum of \$1,000,000.00 ("Loan") regarding the real property located at 122 Carmel Riviera Drive,
7 Carmel, California 93923 ("Subject Property"), extended to Plaintiff in 2007 by Alliance Bancorp.
8 The adversary action has been consolidated with a relief from stay proceeding and an objection to
9 claim proceeding dealing with similar issues pursuant to The Court's direction.

10 Plaintiff asserts two causes of action against US Bank for declaratory relief for quiet title. Defendant
11 states that its analysis of the case is as follows: "Plaintiff alleges that the assignment of the note from
12 the beneficiary of the loan, MERS, to USBank was invalid in light of the July 13, 2007 Chapter 7
13 bankruptcy filing of Alliance Bancorp. However, the Allonge in connection with the note was
14 executed on or about April 16, 2007 which is prior to the July 13, 2007 filing of Chapter 7
15 Bankruptcy of Alliance Bancorp. Defendant filed an Answer to Plaintiff's Adversary Complaint on
16 May 24, 2011." Plaintiff contends that the documents are not as they appear or are represented.
17 Plaintiff has a number of contentions as to the defective nature of the loan and its documents,
18 particularly with regard to the securitized trust funding, the chain of title, and the manner of
19 assignments or lack thereof. Plaintiff contends, in fact, that Defendant should be considered a
20 stranger to the transaction and is not entitled to anything.

21 **3. The Parties Joint Position With Respect to Bankruptcy Rules 7008 and 7012(b)**

22 The Parties take the position that the instant adversary proceeding is a core proceeding and
23 that this Court has subject matter jurisdiction pursuant to 12 U.S.C. § 157(b)(2)(K).

24 **4. Proposed Discovery and Proposed Cut-Off Dates For Discovery and Pre-Trial Motions**

25 Plaintiff has engaged in extensive written discovery. USBank is currently in the process of
26 preparing written discovery. Accordingly the Parties propose the following dates:

- 27 1) Written Discovery cut off January 10, 2012;

- 2) Depositions of witnesses, including Plaintiff, (some to be disclosed in written discovery responses) by **March 1, 2012**;
- 3) Depositions of experts by **April 18, 2012**;
- 4) Dispositive motions filed by **May 25, 2012**;
- 5) Trial date after **July 5, 2012**.

5. Trial

Given Plaintiff's equitable claims of declaratory relief and quiet title, a Court trial is requested by the Parties. The Parties estimate that the length of the trial will be no more than 3 days.

6. Alternative Dispute Resolution

The Parties have not discussed Alternative Dispute Resolution, and Plaintiff heretofore rejected it. Defendant is agreeable to Alternative Dispute Resolution.

7. Statement of Non-Government Parties

U.S. Bank National Association, as Trustee for JPM ALT 2007-A2 – defendant. U.S. Bank is affiliated with US Bancorp.

8. Other Matters

Not applicable.

DATD: September 19, 2011

ALVARADO SMITH
A Professional Corporation

By: /s/ S. Christopher Yoo
JOHN M. SORICH
CHRISTOPHER YOO
LAUREN M. TAKOS
Attorneys for Defendant,
US BANK, NATIONAL ASSOCIATION,
AS TRUSTEE FOR JPM ALT 2007-A2

DATED: September 19, 2011

MICHAEL R. BERUBE, PRO PER

By: /s/ Michael R. Berube
PLAINTIFF

EXHIBIT II
(3 PAGES)

+ 9 pages

12 pages total

EMAIL FROM DEFENDANT'S ATTORNEY CONFIRMING
NEGOTIATED CHANGES TO JOINT STATEMENT



RE: Here is the word version for you to type on--Joint Status

Tuesday, September 13, 2011 3:18 PM

From: "Michael Berube" <michaelberube@yahoo.com>

To: "Lauren M. Takos" <ltakos@alvaradosmith.com>

That is OK, go ahead and file it.

--- On Tue, 9/13/11, Lauren M. Takos <ltakos@alvaradosmith.com> wrote:

From: Lauren M. Takos <ltakos@alvaradosmith.com>
Subject: RE: Here is the word version for you to type on--Joint Status
To: "Michael Berube" <michaelberube@yahoo.com>
Date: Tuesday, September 13, 2011, 2:56 PM

Here you go—incorporated changes, but since we are agreeable to mediation/ADR I changed that provision a bit.

Please let me know when the doc is okay to file. Thanks!

Lauren

From: Michael Berube [mailto:michaelberube@yahoo.com]
Sent: Tuesday, September 13, 2011 2:48 PM
To: Lauren M. Takos
Subject: Re: Here is the word version for you to type on--Joint Status

I would like for Paragraph 2. to read as follows:

2. Factual Background and Procedural History

In connection with Plaintiff's bankruptcy petition, Plaintiff filed the instant adversary Complaint on February 16, 2011, which arises out of the events surrounding the mortgage loan in the sum of \$1,000,000.00 ("Loan") regarding the real property located at 122 Carmel Riviera Drive, Carmel, California 93923 ("Subject Property"), extended to Plaintiff in 2007 by Alliance Bancorp.

The adversary action has been consolidated with a relief from stay proceeding and an objection to claim proceeding dealing with similar issues pursuant to The Court's direction. Plaintiff asserts two causes of action against US Bank for declaratory relief for quiet title.

Defendant states that its analysis of the case is as follows: "Plaintiff alleges that the assignment of the note from the beneficiary of the loan, MERS, to USBank was invalid in light of the July 13, 2007 Chapter 7 bankruptcy filing of Alliance Bancorp. However, the Allonge in connection with the note was executed on or about April 16, 2007 which is prior to the July 13, 2007 filing of Chapter 7 Bankruptcy of Alliance Bancorp. Defendant filed an Answer to Plaintiff's Adversary Complaint on May 24, 2011." Plaintiff contends that the documents are not as they appear or are represented.

Plaintiff has a number of contentions as to the defective nature of the loan and its documents, particularly with regard to the securitized trust funding, the chain of title, and the manner of

assignments or lack thereof. Plaintiff contends, in fact, that Defendant should be considered a stranger to the transaction and is not entitled to anything.

And for Paragraph 6. to read as follows:

6. Alternative Dispute Resolution

The Parties have not discussed Alternative Dispute Resolution and have heretofore rejected it.

You previously had two Paragraphs #3. I renumbered the paragraphs as well.

I have a meeting which will last until around 4 P.M. I will check my email to see if you are OK with these changes.

Sincerely,

Michael Berube

--- On Tue, 9/13/11, Lauren M. Takos <ltakos@alvaradosmith.com> wrote:

From: Lauren M. Takos <ltakos@alvaradosmith.com>
Subject: Here is the word version for you to type on--Joint Status
To: "Michael Berube" <michaelberube@yahoo.com>
Date: Tuesday, September 13, 2011, 10:33 AM

Hi Mr. Berube,
Attached is the word version of the joint status statement. Can you let me know what time you anticipate having this back to me? Thank you!

AlvaradoSmith APC

Lauren Takos Santa Ana Office AlvaradoSmith APC 1 MacArthur Place, Suite 200 Santa Ana, CA 92707 www.AlvaradoSmith.com	Attorney (714) 852-6800 (Direct: (714) 852-6865) Fax: (714) 852-6899 *Email: ltakos@AlvaradoSmith.com
---	---

P Before printing this e-mail - think if it is necessary. Think Green!

NOTICE: CONFIDENTIAL AND PRIVILEGED INFORMATION - This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message.

IRS Circular 230 Disclosure: To insure compliance with requirements by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

**RE: Meet and Confer (berube)**

Monday, September 12, 2011 5:34 PM

From: "Lauren M. Takos" <ltakos@alvaradosmith.com>**To:** "Michael Berube" <michaelberube@yahoo.com>

No big deal...we will still file jointly...we'll just file it tomorrow. It was only if we wanted to file it today that the 5:30 deadline existed.

Lauren

-----Original Message-----

From: Michael Berube [mailto:michaelberube@yahoo.com]

Sent: Monday, September 12, 2011 5:34 PM

To: Lauren M. Takos

Subject: RE: Meet and Confer (berube)

Sorry, can't sign off on this. Haven't agreed to ADR. Need time to look over dates, etc. If you need to file something by 5:30, that time has passed. File a unilateral statement and I will file mine tomorrow. Sorry you didn't show me this earlier.

Sincerely,

Michael Berube

--- On Mon, 9/12/11, Lauren M. Takos <ltakos@alvaradosmith.com> wrote:

> From: Lauren M. Takos <ltakos@alvaradosmith.com>

> Subject: RE: Meet and Confer (berube)

> To: "Michael Berube" <michaelberube@yahoo.com>

> Date: Monday, September 12, 2011, 5:23 PM

> We have not served this...the POS is

> just there because the secretary has to leave right at 5:30

> Lauren

>

> -----Original Message-----

> From: Michael Berube [mailto:michaelberube@yahoo.com]

>

> Sent: Monday, September 12, 2011 5:22 PM

> To: Lauren M. Takos

> Subject: RE: Meet and Confer (berube)

>

> You sent the draft over in a format that I cannot

> open. Can you send it as a PDF? It would be hard

> for me to agree to filing something at the last minute that

> I cannot read.

>

> Michael Berube

>

> --- On Mon, 9/12/11, Lauren M. Takos <ltakos@alvaradosmith.com>

> wrote:

>
> > From: Lauren M. Takos <ltakos@alvaradosmith.com>
> > Subject: RE: Meet and Confer (berube)
> > To: "Michael Berube" <michaelberube@yahoo.com>
> > Date: Monday, September 12, 2011, 5:03 PM
> > Thank you. Here is the draft I will
> > file this evening if you approve...thanks. Sorry for
> the
> > rush, but I if I file tonight, I need your approval
> by
> > 5:30pm.
> > Thanks.
> >
> > Lauren
> >
> >
> > -----Original Message-----
> > From: Michael Berube [mailto:michaelberube@yahoo.com]
> >
> > Sent: Monday, September 12, 2011 4:35 PM
> > To: Lauren M. Takos
> > Subject: RE: Meet and Confer (berube)
> >
> > Those dates seem OK, again assuming compliance with
> > production requests by October 1, 2011.
> >
> > Will you file a joint statement to that effect?
> >
> > Thank you,
> >
> > Michael Berube
> >
> > --- On Mon, 9/12/11, Lauren M. Takos <ltakos@alvaradosmith.com>
> > wrote:
> >
> > > From: Lauren M. Takos <ltakos@alvaradosmith.com>
> > > Subject: RE: Meet and Confer (berube)
> > > To: "Michael Berube" <michaelberube@yahoo.com>, <cyoo@alvaradosmith.com>
> > > "Christopher Yoo" <cyoo@alvaradosmith.com>
> > > Date: Monday, September 12, 2011, 3:29 PM
> > > Dear Mr. Berube,
> > > I have to confirm with the client to see if
> > viewing
> > the
> > > document in Northern California is acceptable;
> > > however, I
> > > believe your request is reasonable.
> > > I will follow up again to see if we can complete
> > the
> > > discovery responses and provide you with the
> > > discovery
> > > documents by October 1, 2011. Thus, using the
> > > October

> > > 1 date, I would just request that the paper
> discovery
> > cut-off be moved to January 10, 2012. Also, April
> 15
> > is a
> > > Sunday...can we push it to April 18?
> > > Thank you.
> > >
> > > Lauren
> > >
> > >
> > > -----Original Message-----
> > > From: Michael Berube [mailto:michaelberube@yahoo.com]
> > >
> > > Sent: Monday, September 12, 2011 3:06 PM
> > > To: Lauren M. Takos; Christopher Yoo; John
> Sorich
> > > Subject: RE: Meet and Confer
> > >
> > > First of all, since your firm has an office in
> San
> > > Francisco, it seems a possible good compromise to
> have
> > any
> > > note document viewing occur at that office
> rather
> > than
> > > hundreds of miles away from the property, the
> court
> > venue,
> > > and me.
> > >
> > > We also still need to go over some of your
> discovery
> > > objections, such as directing me to subpoena a
> Texas
> > title
> > > insurance company file rather than having you
> supply
> > the
> > > copy of the trustee sale guarantee, etc. I
> believe
> > that in
> > > responding to discovery and document requests,
> you
> > need to
> > > get documents available from your client and
> your
> > client's
> > > agents and not just respond negatively if the
> law
> > office
> > > hired by the client does not have documents in

> its
> > > possession at the time.
> > >
> > > With regard to your request for my input on
> > scheduling, it
> > > is difficult to set discovery cut off and other
> dates
> > while
> > > we are still so unsure about if and when your
> > discovery
> > > responses will be ready.
> > >
> > > By your letter to me of August 5, 2011, you
> indicated
> > that
> > > the verifications to your discovery responses
> and
> > objections
> > > would be delivered right away. It has now been 5
> more
> > weeks
> > > and your latest response to my inquiry states
> that you
> > need
> > > more weeks and I am still not sure when your
> other
> > responses
> > > will be here.
> > >
> > > Assuming that you complete your discovery answers
> to
> > my
> > > last requests by October 1, 2011, I would suggest
> the
> > > following schedule:
> > >
> > > Paper Discovery cut off January 2, 2012
> > >
> > > Depositions of witnesses (some to be disclosed
> in
> > paper
> > > discovery responses) by March 1, 2012
> > >
> > > Depositions of experts by April 15, 2012
> > >
> > > Dispositive motions filed by May 25, 2012
> > >
> > > Trial date after July 5, 2012.
> > >
> > > This schedule is based upon the assumption that
> you
> > will
> > > have completed your verified discovery responses

> in
> > the next
> > > 3 weeks though.
> > >
> > > Sincerely,
> > >
> > >
> > > Michael Berube
> > >
> > >
> > >
> > > --- On Mon, 9/12/11, Lauren M. Takos <ltakos@alvaradosmith.com>
> > > wrote:
> > >
> > > > From: Lauren M. Takos <ltakos@alvaradosmith.com>
> > > > Subject: RE: Meet and Confer
> > > > To: "Michael Berube" <michaelberube@yahoo.com>
> > > > Date: Monday, September 12, 2011, 1:08 PM
> > > > Hi Mr. Berube,
> > > > I've sent the client a couple emails
> > regarding
> > the
> > > timeline. I think if you can give me two
> > weeks I
> > > would
> > > > greatly appreciate it. So, if two weeks from
> > now
> > we
> > > have the
> > > > verification, and perhaps set up a date for
> > you
> > to see
> > > the
> > > > Note, and hopefully have the rest of the
> > docs...what
> > > is your
> > > > proposed timeline?
> > > >
> > > > Lauren
> > > >
> > > > -----Original Message-----
> > > > From: Michael Berube [<mailto:michaelberube@yahoo.com>]
> > > >
> > > > Sent: Monday, September 12, 2011 9:56 AM
> > > > To: Lauren M. Takos
> > > > Subject: RE: Meet and Confer
> > > >
> > > > Any idea when I will get your response to my
> > meet
> > > and
> > > > confer letter? I will be better able to
> > offer

> > some
> > > dates once I receive it, shortly?
> > >
> > > --- On Fri, 9/9/11, Lauren M. Takos <ltakos@alvaradosmith.com>
> > > wrote:
> > >
> > > > From: Lauren M. Takos <ltakos@alvaradosmith.com>
> > > > Subject: RE: Meet and Confer
> > > > To: "Michael Berube" <michaelberube@yahoo.com>,
> > > > "Christopher Yoo" <cyoo@alvaradosmith.com>,
> > > > "John Sorich" <jsorich@alvaradosmith.com>
> > > > Date: Friday, September 9, 2011, 1:46
> PM
> > > > Dear Mr. Berube,
> > > > We received your email. I will have a
> > response to
> > > your
> > > > meet
> > > > and confer shortly. In the interim,
> > however,
> > > since we
> > > > do
> > > > indeed need to discuss dates, please
> send me
> > a
> > > list of
> > > > dates
> > > > that you prefer as I am sure we can
> work
> > around
> > > what
> > > > works
> > > > best for you.
> > > > Thank you!
> > > >
> > > > Lauren
> > > >
> > > > -----Original Message-----
> > > > From: Michael Berube [<mailto:michaelberube@yahoo.com>]
> > > >
> > > > Sent: Friday, September 09, 2011 1:45
> PM
> > > > To: Lauren M. Takos; Christopher Yoo;
> John
> > > Sorich
> > > > Subject: Meet and Confer
> > > >
> > > > Ms. Takos, Mr. Yoo and Mr. Sorich,
> > > >
> > > > I sent you all an email Wednesday,
> September
> > 7,
> > > > 2011.

> > > > Having heard nothing back, I am
> resending
> > with
> > > hope
> > > that you
> > > > will respond. Your letter of August
> 5,
> > 2011,
> > > suggests
> > > > that it would less of a burden on the
> Court
> > to
> > > resolve
> > > the
> > > > discovery issues informally. I trust
> your
> > > sincerity
> > > > and look forward to your cooperation,
> > because
> > > without
> > > that,
> > > > it is difficult to imagine how we
> could
> > come
> > > together
> > > on
> > > > dates that Judge Weissbrodt is
> expecting to
> > be
> > > filed
> > > next
> > > > Monday, September 12th:
> > > >
> > > >
> > > > September 7, 2011
> > > >
> > > > John Sorich
> > > > jsorich@alvaradosmith.com
> > > > S. Christopher Yoo
> > > > cyoo@alvaradosmith.com
> > > > Lauren M. Takos
> > > > ltakos@alvaradosmith.com
> > > >
> > > > re: 2nd Meet and Confer about
> objections to
> > > Michael
> > > > Berube
> > > > Discovery Requests
> > > > Northern District of
> California,
> > > > San Jose Division BK Case 09-54715 ASW
> > > > Adv. # 11-05054
> > > > RS jms 758 and associated

> > > > Objection to Claim
> > > >
> > > >
> > > > In your letter dated August 5, 2011,
> you
> > indicated
> > > that
> > > > "Defendant will provide you with the
> > verification to
> > > the
> > > > Special Interrogatories
> immediately."
> > To
> > > date, I
> > > > have received no such verification.
> > Please
> > > forward
> > > the
> > > > verification via email to me at: michaelberube@yahoo.com
> > > >
> > > > How much advance notice will you
> require for
> > me
> > > to
> > > > visit
> > > > your office to view the original
> note? Do
> > you
> > > agree
> > > > to
> > > > allow me to bring a forensic document
> > examiner?
> > > >
> > > > Your August 5 letter states that
> > "Defendant
> > > has
> > > > been
> > > > diligently working to obtain a copy of
> the
> > > Trustee
> > > > Sale
> > > > Guarantee". Have you obtained that
> > document
> > > yet?
> > > >
> > > > Your letter states that regarding the
> > request for
> > > a
> > > > copy of
> > > > the Declaration of Default applicable
> to
> > the
> > > Notice

> > > of
> > > > Default, "Defendant will produce
> the
> > document
> > if
> > > it
> > > > obtains it from First American
> Loanstar
> > > > Services.".
> > > > Have you obtained that document?
> > > >
> > > > Your letter states that you are
> "still
> locating
> > the
> > > > pooling and servicing agreement.".
> Have
> you
> > > located
> > > > that document?
> > > >
> > > > As you know we have to file something
> on
> > > September
> > > 12,
> > > > 2011, relating to the hearing scheduled
> for
> > > September
> > > 26,
> > > > 2011. Can we plan to meet and confer
> by
> > > telephone
> > > this
> > > > Friday?
> > > >
> > > > Sincerely,
> > > >
> > > >
> > > > Michael Berube
> > > >
> > > >
> > >
> >
>
>

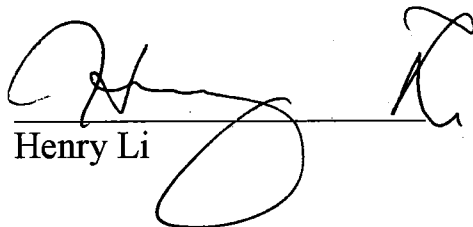
CERTIFICATE OF SERVICE BY MAIL

I, Henry Li, certify that I am a resident of Santa Clara County, California. I am over the age of eighteen years and I am not a party to this case. My business address is: 123 E. San Carlos Street, San Jose, CA 95112

On September 22, 2011, I served the **PLAINTIFF'S CORRECTION TO JOINT STATEMENT FILED BY DEFENDANT** by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail in San Jose, CA, addressed as follows:

ALVARADO SMITH
1 Mac Arthur Boulevard, Suite 200
Santa Ana, CA 92707

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 22, 2011 at San Jose, California.


Henry Li